

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DAVID McIVER,

Plaintiff,

v.

**EXXONMOBIL MEDICARE
SUPPLEMENT PLAN, *et al.*,**

Defendants.

)
)
)
)
)
)
)
)
)
)
)

CIVIL ACTION 08-0461-WS-C

ORDER

This matter comes before the Court on the Motions to Dismiss (docs. 17, 18) filed by defendants Exxon Mobil Corporation (the “Corporation”) and ExxonMobil Medicare Supplement Plan (“EMMSP”), respectively. On January 7, 2009, Magistrate Judge Cassady entered a Report and Recommendation (doc. 29) recommending that both motions be granted. More specifically, the Magistrate Judge recommended that all claims against the Corporation be dismissed and that Count III be dismissed as to defendant EMMSP. Plaintiff did not file objections to the Report and Recommendation within the 10-day period prescribed by 28 U.S.C. § 636(b)(1)(C), Rule 72(b)(2), Fed.R.Civ.P., and Local Rule 72.4(a).

On January 14, 2009, after entry of the Report and Recommendation, the undersigned entered an Order (doc. 30) allowing plaintiff to amend the Complaint to eliminate all claims against the Corporation. Thus, as currently configured, this lawsuit no longer involves any claims against Exxon Mobil Corporation, and that entity’s Motion to Dismiss (doc. 17) is **moot**. As for EMMSP’s Motion to Dismiss, after careful review of the court file, the undersigned **adopts** the Report and Recommendation and **grants** the Motion to Dismiss (doc. 18). Count III is hereby **dismissed** as to defendant EMMSP.

DONE and ORDERED this 2nd day of February, 2009.

s/ WILLIAM H. STEELE
UNITED STATES DISTRICT JUDGE